

VZCZCXRO0423
RR RUEHCHI RUEHDT RUEHHM
DE RUEHML #1647/01 1020838
ZNY CCCCC ZZH
R 120838Z APR 06
FM AMEMBASSY MANILA
TO RUEHC/SECSTATE WASHDC 0521
INFO RUEHHS/ASSOCIATION OF SOUTHEAST ASIAN NATIONS
RUCPDO/DEPT OF COMMERCE WASHDC

C O N F I D E N T I A L SECTION 01 OF 03 MANILA 001647

SIPDIS

SIPDIS

STATE FOR EAP/MTS
STATE PASS TO USTR FOR BWEISEL, VESPINEL, AND DKATZ
BANGKOK FOR DOJ CHRIS SONDERBY
USDOC FOR 4430/ITA/MAC/SBERLINGUETTE
USDOC PASS TO USPTO FOR PETER FOWLER

E.O. 12958: DECL: 04/11/2016
TAGS: [ETRD](#) [ECON](#) [KIPR](#) [EINV](#) [RP](#)
SUBJECT: UPDATE ON IPR PROTECTION: KEY RESIGNATION AND
MANEUVERINGS

REF: A. REF A: 06 MANILA 836
[1](#)B. REF B: 06 MANILA 187
[1](#)C. REF C: 05 MANILA 5838

Classified By: Econ Counselor Robert Ludan for Reason 1.4 B and D.

SUMMARY

[1](#)1. (C) The Executive Director of the Optical Media Board (OMB), Marivic Benedicto, will resign effective April 14 due to what she describes as a "personality conflict" with OMB Chairman Edu Manzano. OMB has not named her successor. Benedicto was responsible for OMB's day-to-day operations and much of the agency's success. With increased high-level attention to intellectual property rights in the last few months (reftel A), Manzano seems to want to take a more active, hands-on management role. Benedicto's departure leaves all three OMB legal positions vacant. Manzano is a consummate politician very concerned about his relations with the business community. He does appear committed to OMB's mission. The OMB is still waiting for the additional 2006 operation funds promised by President Arroyo (reftel B), which have now been cut to less than \$100,000. OMB needs stronger and more consistent support from the GRP economic team. The recent decision to place the OMB in the Department of Trade and Industry could invest it with more authority and possibly more resources. End Summary.

ONLY ROOM FOR ONE MANAGER

[1](#)2. (C) Since OMB's inception two years ago, Benedicto has been the key official responsible for defining the OMB's role, setting goals, and managing day-to-day operations. Ambitious and focused, her work resulted in numerous raids and 116 cases filed in court. She worked closely with intellectual property rights holders to facilitate cooperation and gather the resources necessary for operations. Significantly under-staffed and under-resourced, the OMB has nevertheless achieved substantial results under Benedicto's management. She still had much unfinished business at the OMB but said that it would not help the agency to have "two managers." She referred to Manzano as a "micro-manager who is not interested in her input or assistance."

[1](#)3. (C) In recent months, Benedicto found that routine decisions she made were often countermanded or questioned. Manzano took away much of her authority and made it clear that he wanted to manage operations himself. Benedicto fills one of three legal positions at OMB, but the other two have been vacant for several months. Chairman Manzano told econoff on April 7 that he was sorry to see Benedicto go. He said he intends to replace Benedicto with a lawyer who previously worked for the Motion Picture Association of America (MPAA) in the Philippines and that he had already discussed this possibility with industry representatives. Curiously, our MPAA contact said that Manzano had not mentioned this to him, and he is not sure to whom Manzano might be referring.

[1](#)4. (C) Benedicto said that while Manzano is committed to the success of the OMB, she does not think that he will be nearly as aggressive as she had been on enforcement of the Optical Media Act. Benedicto described Manzano as a politician. She said he is concerned about what others think about him, which may influence his decisions. Benedicto cited the example of a recent raid that she had authorized. Manzano said that he did not agree with the target, for no apparent reason, and wanted the raid canceled. Benedicto speculated that Manzano may have balked because a high-profile individual owned the mall. Benedicto described another instance in which she authorized a raid on a mall that resulted in gun shots that wounded a young Muslim boy. When Manzano received a call

from a Muslim congressman, he blamed the incident on Benedicto and told her that she should not have authorized the raid. Benedicto argued that raids are law enforcement actions, which run an inherent risk of injury, and while the injury was regrettable, the raid itself was well-planned and highly successful.

MANILA 00001647 002 OF 003

OMB CONTINUES TRAINING COOPERATION

15. (U) The OMB just concluded a one-day training for law enforcement officials aimed at enhancing prosecution of IPR cases. Benedicto said the sessions were very positive. The training was sponsored by USAID and resulted in a manual of operations for optical media law enforcement. Benedicto also coordinated a two-day regional training with the U.S. Patent and Trademark Office on optical media law and enforcement, which took place April 5 and 6. About 100 participants from the ASEAN region participated. Adrian Cristobal, Director General of the Intellectual Property Office, presented opening remarks on behalf of President Arroyo, stating that "Our success in reducing IPR violations in optics media has been made possible through the strong will of my government which enabled concerned government agencies, led by the Optical Media Board, and the private sector, particularly the Intellectual Property Coalition, to forge a determined and effective partnership to combat intellectual piracy." Chairman Manzano was not available for remarks on the first day due to illness, but did participate on the second day, although he did not address the audience.

STILL WAITING FOR FUNDING

16. (U) Benedicto reported that the additional operation funds from the proceeds of the Manila Film Festival promised by President Arroyo (reftel B) have not yet been released. In February, there were a number of rumors circulating that President Arroyo might have been planning to replace Chairman Manzano and those rumors reportedly caused the Budget Office to freeze funding. Benedicto said that funds would likely be released soon, though Manzano added that the actual funding would probably be much less than originally promised.

17. (C) On the first directive from Malacanang, the OMB was to receive 30 percent of the GRP's proceeds from the Manila Film Festival in January. The OMB's share was then reduced to 20 percent due to complaints from the Philippine Anti-Piracy Council, whose own share had been severely cut. In the latest communication to the OMB, the President has dropped the OMB to 5 percent, increased the Anti-Piracy Council's allotment by 5 percent, and increased her own discretionary funds by 10 percent. When Manzano called Malacanang to complain, he was told to "keep quiet." His contacts told him that it is likely that President Arroyo will privately give the OMB the additional 10 percent she moved to her discretionary fund, but that she had to move it in order to appease other agencies. He was told that as long as he does not "make any noise," OMB will get the funds.

OMB NEARING FIRST IPR CONVICTION

18. (SBU) The OMB has organized about a dozen raids since January 1, generating 22 new IPR cases. Of the OMB's 116 total cases, 38 might be dismissed. Benedicto said that she agreed with the GRP Department of Justice on these dismissals since the perpetrators were "John Does," and the agency does not have any way to assert identity and pursue the cases. The remaining 78 cases are proceeding through the justice system. Benedicto noted that they may soon get one conviction on a case in Davao City, dating from 2004. In this case, the defendant wants to plea bargain down from a count of illegal importation, which carries a sentence of one to three years, to a count of possession of pirated goods, which carries a sentence of one to three months. Benedicto was initially hesitant to accept the plea bargain, but noted that regardless of which count the defendant is convicted on, either sentence would render the defendant eligible for immediate probation under Philippine law as a first-time offense. Benedicto said that the OMB will probably accept the plea bargain to solidify a conviction. Benedicto added that if the defendant is convicted for a second offense, he would have no opportunity for probation.

19. (U) Benedicto also reported that the Department of Trade and Industry (DTI) now has oversight responsibility for the OMB. The agency was previously under the direct supervision of the President, but under Executive Order 518 signed the week of March 27, President Arroyo moved this authority to

MANILA 00001647 003 OF 003

DTI.

COMMENT

110. (C) Benedict's work at the OMB and the agency's successes in 2005 were key factors in the Embassy's recommendation for the 301 out-of-cycle review (reftel C). Manzano's ability to maintain OMB progress will depend on his ability to act independently of personal political concerns. His next executive director needs to have the critical legal expertise and experience, be able to work closely with him, and also be able to step back and let Manzano run things. This combination would help keep the agency moving in a positive direction. In addition, Manzano needs to act quickly to fill the other two legal positions. Benedicto will return to the private sector to work for Filipino-owned Viva Records where she will still be involved in IPR issues, though more from a rights holder perspective than a law enforcement one. It is disappointing to lose her energy and leadership at OMB. President Arroyo's decision to reduce the promised funding for MB is also disappointing. One of OMB's challenges is finding adequate resources for operations and stronger, more consistent support from the President's office and the GRP economic team. On the bright side, placing OMB under Trade and Industry Secretary Favila could invest it with more authority and possibly more resources. Kenney